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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/611,780	07/07/2000	Erik Marcussen	5766.200-US	7010

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EXAMINER

HENDRICKS, KEITH D

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/03/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/611,780

Applicant(s)

MARCUSSEN ET AL.

Examiner

Keith Hendricks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-16 and 33-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-16 and 33-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

i) Claims 1, 4-16 and 33-41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicants have amended claim 1 to recite “a particulate component having a mean size of more than 40 μm in the longest dimension”. The claim previously stated that “the particles of the particulate component have a mean size of more than 40 μm in their longest dimension.” These two statements are not equivalent. Furthermore, while applicants point to page 22 of the specification for support of the newly-added language, it is not believed that the teachings of the specification as a whole, provide support for this statement. This does not appear to be the gist of applicants’ invention. This may be due to a translation error from a foreign language priority document. Clarification and -- if necessary -- correction, are requested.

ii) Claims 38-41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

New claims 38-41 recite a SPAN value of the entire finished granule. This is not supported by the specification. Initially, the claims are directed to the production of a granule (singular), not granules. Thus, a single granule cannot have a SPAN value, according to applicants’ definition in the specification, requiring a multitude of granules in order to provide a variance from the mean particle size. Secondly, contrary to applicants statement that these claims are supported at page 10 of the specification, this again does not refer to the SPAN value of the finished granule, but rather to the “particulate component... for the finished granules” (pg. 10, ln. 13-17). Deletion of the improperly-claimed subject matter is required.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-16 and 33-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Herrman et al. (WO 97/43482). The reference and rejection are incorporated as cited in a previous Office action.

Applicants' arguments filed April 14, 2003 have been fully considered but they are not persuasive.

Applicants have amended claim 1, providing for the act of *adding* the components in the provided amounts, as opposed to the previously-examined claim language of reciting the same amounts as being present in the *finished* product. This language is also found at page 22 of the specification. Applicants state that Herrman et al. does not teach this method, in that the reference teaches the act of adding amounts beyond the ranges instantly claimed. In other words, applicant appears to emphasize the amounts of the starting materials versus those present in the finished product. This is not deemed persuasive for the reasons of record.

In the experiments demonstrated at pages 24, 26 and 28 of the Herrman et al. reference, the "recipes" for the granulation process, i.e. the starting components and amounts utilized in the mixing and granulation process, versus those present in amounts of the final product, are provided. Experiment 2.2 (pg. 24) provides the vehicle material (soy fine flour) in an amount of 7.0 kg, and the enzyme component in an amount of 4.27 kg. These amounts equate to approximately 62% for the vehicle material (i.e. the particulate component), and 38% for the enzyme component. The other examples provide similar amounts, such as 61% vehicle to 39% enzyme (pg. 26), and 71% vehicle to 29% enzyme (pg. 28). Thus, the teachings of the reference are clearly not limited to the selected statement provided by applicants, and in fact, read directly upon the instant claim limitations.

Furthermore, the percentages of the granule may be adjusted to fit the desired purpose of the enzyme granule. At page 13 of the reference, lines 13-17, it is stated that "to adjust the granulate properties to the special application purpose in each case those granulation and auxiliary materials can if desired be added in an amount up to [a] maximum of 20 wt%, expediently to a maximum of 15 wt%, with respect to the prepared moist granule." At the bottom of page 14 of the reference, it is stated that enzyme granulates may be prepared to contain "0.08 to 26.4 wt% (dry substance) enzyme or enzyme mixture, 96.92 to 43.8 wt% (dry substance without moisture) of a flour type" as the particulate vehicle component,

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and "optionally up to a total maximum of 17.8 wt% customary granulation or formulation agents." Thus, the intent of the reference is also to provide for an enzyme granule that is within the limitations of the instant claims and disclosed invention.

At page 5 of the response, applicants state that while their claims recite "a mean size of more than 40 μ m in the longest dimension, "artisans typically used finely milled particulate components of less than 40 μ m, as illustrated in Example 1 of EP 304332 and in WO 98/54980, disclosing mean particle sizes of 390 μ m and 480 μ m, respectively." From this statement, it appears then that applicant is in agreement with the Office, in that it was common to use flours with a mean particle size of more than 40 μ m, since 390 μ m and 480 μ m are clearly more than 40 μ m.

Also, as specifically stated previously on the record, common particle size ranges and percentage distributions within flours were well-known and documented throughout the art, and such flours were known to have "a mean size of more than 40 μ m" (instant claim 1). For example, common particle sizes of pasta wheat flours, which are even smaller than traditional wheat flours, are in the 550-150 micrometer granulation particle size range; some having a more standardized flour with a granule range of 350-130 micrometers (*Handbook of Cereal Science and Technology*, Lorenz et al., 1991, page 16), and corn (maize) was known to be in "the commonly used particle-size range (100-1,000 μ m)" (*Influence of Particle Size on the Twin-Screw Extrusion of Corn Meal*, B. W. Garber, et al., Cereal Chem. 74(5):656-661, Copyright 1997 by the American Association of Cereal Chemists, Inc.). To this point, Herrman et al. specifically state at page 4 that "it is expedient in the method according to the invention to use organic flours that are obtained by grinding of cereal grains, legumes and/or fruits of the Malvaceae family (e.g. cottonseed). The cereals that can serve as flour sources within the scope of the invention are especially wheat or rye." Thus, the use of these flours as clearly taught by the reference, meets the instant claim limitations.

Finally, with respect to the SPAN value of instant claims 33-36 and 38-41, applicants again state that "Herrman et al. does mention anything about the importance of the SPAN value, let alone, the importance of a SPAN value of less than 2.5."

This is not deemed persuasive for the reasons of record. As previously stated, the fact that applicant has *recognized* another advantage which would inherently exist and flow naturally from the teachings of the prior art reference, cannot be the basis for patentability when the actual process steps of the claimed invention were disclosed therein. Under this statute, the reference must teach the claimed

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invention, which it does, and the authors need not disclose or even recognize "the *importance* of a SPAN value of less than 2.5", or any other feature of its disclosed invention. Applicants have not sufficiently addressed or rebutted the tangible information and reasons for anticipation provided in the previous Office action(s), and thus the rejection is maintained for the reasons of record. Furthermore, the experiments of Herrman et al. provide for a range amount of "acceptable granules 200-1000 μ m" at 63 wt%. The examiner has provided support on the record regarding the size of the particulate component, and thus as the claimed components used in the disclosed process, as well as the process steps themselves, meet the limitations of the instant claims, the instant invention is anticipated by Herrman et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (703) 308-2959.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached at (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



**KEITH HENDRICKS
PRIMARY EXAMINER**